

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

MOTOROLA, INC., et al.,
Defendants.

No. C10-1823-JLR

DECLARATION OF ALISON POTTER
IN SUPPORT OF MICROSOFT'S
RESPONSE IN OPPOSITION TO
MOTOROLA'S MOTION FOR LEAVE
TO AMEND ITS INVALIDITY
CONTENTIONS

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,
v.

MICROSOFT CORPORATION,
Defendant.

NOTING DATE: December 2, 2011

DECLARATION OF ALISON POTTER
IN SUPPORT OF MICROSOFT'S
RESPONSE IN OPPOSITION TO
MOTOROLA'S MOTION FOR LEAVE
TO AMEND ITS INVALIDITY
CONTENTIONS - 1

CASE NO. C10-1823-JLR

LAW OFFICES
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1 I, Alison Potter, declare the following:

2 1. I am an attorney licensed to practice law in the state of Illinois and am an
3 Associate at the law firm of Sidley Austin LLP, counsel for Microsoft Corporation
4 ("Microsoft") in the above-referenced matter. I make this Declaration in support of
5 Microsoft's Response in Opposition to Motorola's Motion for Leave to Amend Its Invalidity
6 Contentions. I have personal knowledge of the facts stated below or know of such facts from
7 my review of the case file, and if called upon to testify, could and would testify to each of
8 them.

9 2. On September 8, 2011, Motorola launched the Droid Bionic XT875 ("Bionic")
10 to U.S. consumers. Microsoft immediately marshaled its resources to determine whether the
11 newly-released device infringed the claims of the '780 or '582 patent. Importantly, counsel for
12 Microsoft acquired the device from a retail outlet and proceeded to test the Bionic in the same
13 manner as it tested the other Accused Motorola Devices when creating its Preliminary
14 Infringement Contentions.

15 3. On October 7, 2011 counsel for Microsoft contacted Motorola's counsel about
16 updating Microsoft's Asserted Claims and Preliminary Infringement Contentions to add the
17 Bionic as an accused device. A true and correct copy of the October 7 communication is
18 attached hereto as Exhibit E. The proposed Amended Preliminary Infringement Contentions
19 merely added screen shots of the Bionic performing the asserted claims of the Microsoft
20 Patents. These amended Infringement Contentions Microsoft presented no new or
21 substantively changed infringement theories.

22 4. In the October 7 communication, Microsoft further inquired as to Motorola's
23 intention to object to the Amended Preliminary Infringement Contentions. In reply, on
24 October 17, 2011, Motorola's counsel forwarded to Microsoft's counsel a draft joint stipulation
25 between the parties which would permit Microsoft's to amend its Infringement Contentions

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1 provided that Microsoft would agree not to oppose a motion by Motorola to amend its
2 Invalidity Contentions. Motorola proposed to amend its Invalidity Contentions by adding
3 contentions regarding Apple's HyperCard program as the only new reference. A true and
4 correct copy of the October 17 communication is attached hereto as Exhibit F. Ultimately,
5 Microsoft declined to so stipulate.

6 5. In Motorola's November 8, 2011 amended Invalidity Contentions, Motorola has
7 added 91 new references as prior art to the '780 patent, and 19 new references as prior art to
8 the '582 patent. With these amended Invalidity Contentions, Motorola has updated its ten
9 previous invalidity charts and has served Microsoft with five new invalidity charts.

10 6. The Barnes & Noble Notice of Prior Art filed with the United States
11 International Trade Commission discloses 89 prior art references concerning the '780 Patent.
12 In the present litigation, Motorola now seeks to assert 71 of the Barnes & Noble references as
13 new references against the '780 patent in Motorola's amended Invalidity Contentions. Seven of
14 the new references for the '780 Patent do not significantly relate to HyperCard and were not
15 disclosed in the Barnes & Noble Notice of Prior Art.

16 I swear under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct.

18 Dated: November 28, 2011

19 
20 _____
21 Alison Potter

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ Linda Bledsoe
LINDA BLEDSOE